IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9051 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHAGWANDAS BHULCHAND RAJNANI THRO' SON KAMAL BHAGWANDAS

Versus

KA PATEL DISTRICT MAGISTRATE

Appearance:

MR AR THACKER for Petitioner

Mr S K Patel, AGP for Respondent No. 1

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 25/09/2000

C A V. JUDGEMENT

This petition has been filed by the detenu through his son under Article 226 read with Articles 14, 19 21 and 22 of the Constitution of India challenging the order of detention dated 17.7.2000 passed by the learned

District Magistrate, Bhavnagar in exercise of powers conferred on him by section 3(2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 on various grounds.

2. The petitioner states that the order of detention is illegal inasmuch as the legible copies of the documents relied upon were not supplied to the detenu and therefore, the detenu was prevented from making effective representation against the aforesaid order of detention and thus his statutory right of making effective representation has been taken away and the same is in violation of principles of natural justice. The petitioner claims that the detenu had a valuable right of making representation against the detention and since the detenu was not in a position to avail of the statutory benefits, the detention cannot be sustained. The petitioner has, therefore, prayed that the present petition be allowed and the order of detention dated 17.7.2000 be quashed and set aside.

2. Rule was issued in this matter and in response to the service of rule, Mr S K Patel, learned AGP appeared for respondents No.1 & 2. Ms. P J Davawala, learned Addl.Standing Counsel appeared for respondent no.3-Union of India.

3. I have heard the learned Advocates for the parties and have perused the papers. Learned Advocate for the petitioner has argued that the detenu was not supplied with copies of legible documents and he has relied upon page no.43 and 47, reports by the Public Analyst, the accompaniment of the petition which was supplied to the petitioner by the respondents. The said documents were referred to the learned AGP, who after examining the same, agrees that the said two documents were not legible. This would mean that the documents supplied were not legible. In other words, the detenu was not supplied with copies of the legible documents. It is an admitted position that these documents were considered and relied upon by the detaining authority for the purpose of passing detention of the detenu. The said documents were also considered by the State Government while approving the detention order. This would mean that the documents relied upon by the authorities for the purpose of detaining the detenu were not supplied as they was not legible which would amount to non-supply of documents.

4. It is a settled principle of law that the petitioner/detenu had a valuable right of effective

representation against his detention. This right can be exercised only when the detenu knows the material on which the detaining authority relies. Supply of copies of such material/documents which are not legible would amount to non-supply of such documents which would deprive the detenu of his valuable right-statutory as well as constitutional right under Article 22(5) of the Constitution of India of making effective representation against the detention.

5. In this circumstance, it would be worthwhile to refer to a decision of this court in Special Civil Application No.618 of 1999 dated 3.3.2000 (Coram : B C Patel, J.). Para 3 of the said judgment reads as follows:

> "Without addressing about legality of the grounds of detention, the learned Advocate for the petitioner submitted that the petition is required to be disposed of on a short ground as the papers supplied to the detenu are not legible. In view of this, the detenu is deprived from making effective representation. He further stated that all the papers are not illegible but some papers are illegible and as a result of which his right has been adversely affected. Mr Patel, learned AGP after going through the papers, is not in a position to state that all the papers are legible and only some of the papers are illegible. Suffice it to say that the same has deprived the detenu from making effective representation and hence the detention order requires to be quashed and set aside. The detention order passed against the detenu is hereby quashed and set aside. The detenu shall be released forthwith if he is not required in any other case. The petition is allowed."

Looking to the principle enunciated in the aforesaid decision, it is very clear that legible copies of the documents relied upon by the detaining authority have not been supplied. Therefore, the further detention of the detenu cannot be upheld.

In the result, this petition is allowed. The impugned order of detention passed on 17.7.2000 by the District

Magistrate, Bhavnagar is quashed and set aside. The detenu is ordered to be set at liberty forthwith if no longer required in any other case. Rule made absolute accordingly. No order as to costs.

25.9.2000 [D P Buch, J.]
msp.